



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Securiguard, Inc.; Vance Uniformed Protection Services; MVM, Inc.

File: B-254392.8; B-254392.9; B-254392.10;
B-254392.11; B-254392.12; B-254392.13

Date: February 9, 1994

Robert M. Cambridge, Esq., for Securiguard, Inc., Barbara S. Kinosky, Esq., Kinosky and Associates, for MVM, Inc., and Richard O. Duvall, Esq., Richard L. Mocrhouse, Esq., and Michael L. Martinez, Esq., Holland & Knight, for Vance Uniformed Protection Services, Inc., the protesters. George Papaioanou, Esq., and Karl Dix, Jr., Esq., Smith, Currie & Hancock, for Stay, Inc., Robert M. Cambridge, Esq., for Securiguard, Inc., Barbara S. Kinosky, Esq., for MVM, Inc., interested parties.

Laura A. Naide, Esq., National Archives and Records Administration, for the agency.

Sylvia Schatz, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Where solicitation stated that high quality guard services were required and that quality would be equated in the evaluation with the level of the proposed compensation package, but the solicitation also provided for considering other factors in evaluating personnel quality, the agency was not required to conclude that only protester was acceptable, based on fact that it proposed highest compensation.
2. Agency's failure to advise protester during discussions that various proposed rates exceeded the government estimate for those rates was unobjectionable where protester's overall price was not too high.
3. Protester's argument that it was entitled to more than a one-point scoring advantage over awardee under a technical subfactor is without merit where solicitation did not provide that a certain level of qualifications would receive a certain point score, and protester neither alleges nor shows that agency was inconsistent in scoring similarly superior areas of proposals; General Accounting Office will not reevaluate proposals.

4. Price/technical tradeoff was reasonable where agency considered protester's technical advantage in light of awardee's lower price, and determined that technical advantage was relatively insignificant, while price advantage was significant; fact that technical factors were more important than price did not preclude agency from determining that lower-cost proposal represented best value to government.

DECISION

Securiguard, Inc., MVM, Inc., and Vance Uniformed Protection Services, Inc. protest the award of a contract to Stay, Inc., under National Archives and Records Administration (NARA) request for proposals (RFP) No. NAMA-93-NO-P0002 for security services at the NARA I and II facilities in Washington, D.C. and College Park, Maryland. The protesters primarily argue that the evaluation of the proposals was improper.

We deny the protests in part and dismiss them in part.

The RFP, as amended, contemplated the award of a fixed-price contract to furnish security guard services at the NARA I and II facilities for a base year and 4 option years. Offerors were required to submit separate technical and price proposals. A Service Contract Act (SCA) wage determination applicable to security guards was included in the RFP.¹ Award was to be made to the firm submitting the offer determined to be in the best interests of the government, considering price and the following technical factors (with relative weights):

- A. Personnel/Individual Qualifications--45 points (out of 100)
 - 1. qualifications of proposed productive officers (15 points)
 - 2. qualifications of proposed supervisory personnel (15 points)
 - 3. qualifications of proposed project manager (15 points)

¹The Service Contract Act of 1965 (SCA), as amended, 41 U.S.C. § 351-358 (1988), requires employees to be paid at least the minimum hourly wages set forth in the Department of Labor (DOL) area wage determinations.

B. Management Plan--30 points

1. interpretation of NARA's requirements (6 points)
2. method of implementing security services (6 points)
3. supervisory plan (6 points)
4. method of monitoring contract (6 points)
5. incident response plans (6 points)

C. Past Related Experience--25 points

Total price (for the base and option years) was less important than the technical factors.

Nineteen proposals were submitted by the May 10, 1993, initial closing date. The agency initially included 11 proposals in the competitive range; the 11 offerors were then requested to submit responses to written discussion questions relating to proposal weaknesses and deficiencies. After discussions, the agency received and evaluated revised technical and price proposals. The agency determined that 5 proposals remained in the competitive range, and then requested and received best and final offers (BAFO).

The agency evaluated these BAFOs² as follows:

²The agency developed a rating plan which provided for 10 different scores on a numerical/adjectival scale for each factor or subfactor in section M of the RFP as follows:

Superior in all Aspects -	10 points
Exceeds Basic Requirements in Major Way -	9 points
Significantly Exceeds Basic Requirements -	8 points
Exceeds Basic Requirement -	7 points
Fully Meets Requirement -	6 points
Minimally Meets Requirement -	5 points
Falls Slightly Short of Meeting Minimum -	4 points
Falls Short of Meeting Minimum -	3 points
Falls Significantly Short of Minimum -	2 points
No Understanding of the Requirement -	1 point
Fails to Address Requirement -	0 points

The rating also assigned each factor a weight corresponding to its relative weight stated in the RFP. The score for each factor was multiplied by the corresponding weight factor to produce the weighted score for that factor. This
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<u>Offeror</u>	<u>Technical Points</u>	<u>Price</u>
Securiguard	738.5/1000	\$ 18,394,633
Pinkerton	732.5	15,841,350
MVM	725	15,903,920
Vance	701	15,934,781
Stay	677.5	14,974,215

Following a price/technical tradeoff, award was made to Pinkerton on August 6. NARA subsequently terminated Pinkerton's contract (on September 7) for reasons not relevant here, and conducted a new price/technical tradeoff. Based on this analysis, the agency determined that the BAFO of Stay, the incumbent contractor, represented the best overall value to the government. A contract thus was awarded to Stay on September 17, and these protests by Securiguard, Vance, and MVM followed. The protesters raise numerous arguments challenging the award, all of which we conclude are without merit. We discuss many of the issues below.

SECURIGUARD'S PROTEST

Personnel/Individual Qualifications Factor

Securiguard argues that the evaluation of the BAFOs under the personnel/individual qualifications factor was flawed, because NARA failed to take into consideration RFP section L, which indicated that the agency considered compensation to be directly related to the quality of personnel, and section C, which stated that the level of security services required under this contract exceeds the traditional 'guard II' level of qualifications (as defined by the SCA wage determination). Securiguard concludes that it was the only offeror which proposed personnel with the required qualifications, as evidenced by the fact that its compensation plan included the highest wages.

We will review an evaluation only to ensure that it was reasonable and consistent with the stated evaluation criteria. Comarco, Inc., B-249697.2, Jan. 26, 1993, 93-1 CPD ¶ 65.

The evaluation under the personnel/individual qualifications factor was proper. Although section L provided that the agency would consider "compensation and related incentives to be directly related to the quality of personnel," this was not the only factor in the personnel qualifications

²(...continued)
rating plan was not disclosed in the RFP.

evaluation. Section L also provided for consideration of other factors; for example, the RFP required security officers who were "qualified for appointment" at the entry level in a Tier 1 police force. Section C described the term "qualified for appointment" as requiring the proposed personnel to meet specific qualifications; the agency took these qualifications into consideration in evaluating the BAFOs. Since there is nothing in the above RFP provisions suggesting that an offeror's proposed compensation levels were to be the sole, or even the most significant, factor in the personnel qualifications evaluation, Securiguard's contention that it should have been the only acceptable offeror under this factor based on its proposal of the highest wages is without merit.

Price

Securiguard complains that Stay failed to price a significant amount of training that was required under the contract and that the agency unreasonably determined that Stay could perform the contract at its proposed price. This argument is without merit. Due to the fixed-price nature of the contract, Stay would be bound to perform all the training required by the solicitation at its offered price; the record shows that Stay agreed in its BAFO to perform all requirements in the solicitation, including the training requirements, at its proposed fixed price. In any case, the agency determined that Stay's reduced training costs were feasible due to its proposal--as the incumbent contractor--of experienced guards who did not require as much initial training as those proposed by the other offerors. We note, furthermore, that Securiguard concededly offered more than 5,000 hours of no cost training for the base year of the contract. We conclude that there is no basis to question this aspect of the evaluation.

Discussions

Securiguard maintains that NARA treated it unfairly because NARA advised other offerors of the areas in which their price proposals were deficient, but advised Securiguard only generally that its total price exceeded the government estimate, without telling the firm that its proposed guard compensation was too high.

We find nothing unfair or improper in the discussions. The agency advised Securiguard that its total proposed price exceeded the government estimate, and this put the firm on notice that its overall price was too high. In response to this notification, Securiguard lowered its prices in all areas except compensation, resulting in a significant reduction in its initial price (from \$20,968,842 to \$18,394,633).

The fact that Securiguard was not advised that its proposed compensation levels were too high does not change our conclusion. There is no indication that the agency ever prepared an estimate of reasonable compensation levels--in contrast with other cost areas, NARA did not advise any offeror that its proposed compensation was too high--or ever considered Securiguard's (or any offeror's) proposed compensation level "too high" in an objective sense. Rather, NARA took the approach of equating (to some extent, as discussed above) compensation with personnel quality in the RFP while at the same time providing for a tradeoff to determine whether a higher cost was warranted by offsetting technical advantages. Under this scheme, since in the final analysis a high compensation level could be justified--Securiguard's personnel quality in fact was the highest rated, although Stay's price/technical combination ultimately was found to be more advantageous to the government--there was no requirement that NARA advise Securiguard or any other offeror during discussions that its proposed compensation level was too high.

Relaxed Specifications

Securiguard asserts that NARA improperly relaxed the performance requirements for Stay, since Stay was not required to provide a full complement of armed guard personnel at the Archives II facility on the October 1 contract start date. The record shows, however, that in a September 7 facsimile (fax) transmission the agency advised Securiguard (which confirmed receipt), Stay, and the other competitive range offerors that the staffing requirements had been changed. The fax stated that "[i]n lieu of the full staffing requirements as set forth in the solicitation," NARA would "relax the requirement for contract performance at the Archives II facility" from October 1 until October 18, and would "only require two uniformed, armed security officers and one uniformed, armed supervisor" during this time. Stay's proposal offered to meet this relaxed staffing requirement. Whether Stay supplied the required guard services on the start date is a matter of contract administration, which is the responsibility of the agency and not for consideration by our Office under our Bid Protest Regulations, 4 C.F.R. § 21.3(m) (1993). Jasper Painting Serv., Inc., B-251092, Mar. 4, 1993, 93-1 CPD ¶ 204.

MVM'S PROTEST

Responsibility

MVM argues that NARA's affirmative determination of Stay's responsibility was improper since, under a prior General Accounting Office (GAO) solicitation for security guard

services at the GAO building, Stay's past related experience was rated weak due to performance problems under contracts with NARA and the Department of Defense (DOD).

We will review an affirmative responsibility determination in the circumstances here only where it is shown that it may have been made fraudulently or in bad faith. See 4 C.F.R. § 21.3(m)(5). Although MVM broadly asserts that finding the awardee responsible in light of the above information regarding Stay's alleged past performance problems itself evidences bad faith, this is not the case. Even if NARA was aware of Stay's past performance rating under the GAO contract¹, this does not mean that NARA could not reasonably determine that Stay is a responsible prospective contractor for the current procurement. Each procurement stands on its own; NARA's judgment as to Stay's past performance may be different from another agency's depending on the particular circumstances of the procurement involved. See Blaze Constr. Co., Inc., B-248008, June 17, 1992, 92-1 CPD ¶ 526. Since MVM has made no showing of possible bad faith, we have no basis to consider this allegation.

Discussions

MVM argues that the discussions with the firm were inadequate because, although MVM's OVH factor (overhead, profit, and general and administrative costs) was higher than Stay's, NARA failed to advise MVM--while at the same time it did advise Stay--that its OVH factor exceeded the government estimate. As discussed above, agencies are required to advise offerors if their proposed prices are considered too high or too low. See GeoMet Data Servs., Inc., supra. There is no requirement, however, that agencies advise offerors of elements of their proposed prices that exceed a government estimate. NARA advised Stay that its OVH factor was too high only because that was the reason Stay's initial total price was deemed too high. MVM's total price, on the other hand, was not too high. The agency therefore was not required to conduct similar discussions with the firm aimed at lowering its price.

¹The agency's responsibility determination was based, in part, on a review of the references provided by several federal government agencies, including the DOD and NARA, which indicated that Stay's overall performance under its prior contracts with these agencies was positive. Specifically, both NARA and DOD stated in their reference worksheets that Stay had timely fulfilled its prior contracts, that there were not any notable problems with Stay, and that they would contract again with this firm for similar work.

Personnel/Individual Qualifications Factor--Qualifications
of Proposed Project Manager Subfactor

MVM argues that the agency improperly downgraded its proposal under the qualifications of proposed project manager subfactor for proposing a uniformed employee as an acting project manager. MVM believes the solicitation prohibited only the project manager, and not an alternative or acting project manager, from being a uniformed employee.

Under our Bid Protest Regulations, protests are required to be filed within 10 working days after the basis of protest is known or should have been known. 4 C.F.R. § 21.2(a)(2). NARA specifically advised MVM in its June 16 written discussions with the firm that it considered the firm's proposal offering a uniformed employee as an acting project manager to be a deficiency because "[t]he RFP (C.10.1.1, on page 18) specifically prohibits using a uniformed supervisor as the Acting Project Manager." MVM thus knew on this date that the agency interpreted the RFP as prohibiting acting managers from being uniformed employees. If MVM disagreed with the agency's interpretation of the solicitation, it was required to so argue within 10 days after it received this information. Because MVM's protest was not received in our Office until November 30, this argument is untimely and will not be considered. See ESATEL Communications, Inc., B-254411 et al., Dec. 2, 1993, 93-2 CPD ¶ ____.

VANCE'S PROTEST

Personnel/Individual Qualifications Factor--Quality of
Proposed Project Manager Subfactor

Vance argues that its proposal's evaluation advantage over Stay under the quality of proposed project manager subfactor (7--out of 10--points versus 6 points for Stay) should have been greater than 1 point in light of the superior qualifications of Vance's proposed project manager.

There is no basis in the record for challenging the exact scoring advantage given Vance's proposal in this area. Stay's proposal was found to fully satisfy the RFP requirements in this area, and thus was scored "fully meets requirements" (i.e., 6), while Vance's proposed project manager and alternates were found highly qualified and rated "exceeds basic requirement," (i.e., 7). Nothing in the RFP indicated that specific qualifications would lead to specific scores, and Vance has neither alleged nor shown that the evaluation was inconsistent in that higher scores were assigned under other factors or for other proposals based on a similar magnitude of superiority. In other words, while we agree that Vance's proposal was superior to Stay's under this subfactor, there simply is no basis for us

to conclude that this superiority warranted a 2, 3, or 4 point scoring advantage, and that NARA's finding of a 1 point advantage for Vance was unreasonable. For us to conclude otherwise would require us to reevaluate the proposals; this is not our function. Diversified Tech. Consultants, Ltd., B-250986, Feb. 22, 1993, 93-1 CPD ¶ 161.

Qualifications of Proposed Productive Officers Subfactor

Vance argues that it should have received more points (than 6 of the 10 possible) under the quality of proposed productive personnel subfactor of the personnel/individual qualifications factor, because the firm proposed in its BAFO to provide a superior security force, which would consist of Stay's incumbent employees for the Archives I facility and new employees or Stay's incumbent staff for the Archives II facility.

The evaluation of Vance's BAFO under this subfactor was reasonable. As indicated, the solicitation provided that the level of security services required "definitely exceeds the traditional 'guard II' level of qualifications," and that the "normal level of building guard services generally required for [General Service Administration] contracts is not acceptable." Thus, a superior security force would merely meet, and not exceed, the RFP requirements. This being the case, Vance's score of 6 points ("fully meets the requirements") was appropriate. Although Vance seems to indicate that it should have received more points for proposing Stay's incumbent employees for the Archives I facility and new employees or Stay's incumbent employees for the Archives II facility since this plan shows the superiority of its proposed personnel, there is nothing in the record indicating that the agency failed to take into account Vance's proposal to use Stay's incumbent personnel to perform a portion of the contract.

Vance also argues that its BAFO was improperly downgraded under the qualifications of proposed productive officers subfactor, because the agency stated that the firm's proposed guards had "no indication of MD (Maryland) licensing," as required by the RFP, even though Vance's BAFO clearly indicated the majority of its proposed security officers already possessed these certifications. Although the agency concedes that this statement was made in a matrix compiling all the detailed information from the technical evaluation reports of the BAFOS, we believe that this error did not prejudice the firm, because the evaluators' narrative of Vance's BAFO in the technical evaluation report, which was used to rate the firm under this subfactor, clearly shows that the evaluators determined that

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Price Discussions

Vance seems to argue that the price discussions were somehow rendered unequal among offerors by the agency's alleged failure to conduct a proper price analysis. This argument is without merit. Not only is there no evidence of an improper price analysis--Vance's argument is based solely on the agency's statement that it did not use the OVH analysis in the price review, and Vance's assertion that it thus is not clear whether a proper analysis was performed--but Vance has neither alleged nor shown that it was prejudiced by the resulting discussions, even assuming that they were somehow improper. Specifically, Vance does not state that the agency failed to advise the firm of any specific deficiencies in its own price proposal that precluded Vance from making its price proposal more competitive.

Price/Technical Tradeoff

Vance argues that the agency's price/technical tradeoff failed to follow the RFP evaluation scheme, which made technical considerations more important than price. Specifically, Vance maintains that, in light of the greater importance of technical factors, its superior technical score should have been found to offset Stay's lower price.

In a negotiated procurement, an agency may make award to a lower priced, lower-technically rated offeror if it determines that the price premium involved in awarding to a higher technically rated, higher-priced offeror is not justified given the acceptable level of technical competence obtainable at the lower price. See W.M. Schlosser Co., Inc., B-247579.2, July 8, 1992, 92-2 CPD ¶ 8. We will review such tradeoffs to assure that they are reasonable in light of the evaluation scheme. Lockheed Corp., B-199741.2, July 31, 1981, 81-2 CPD ¶ 71.

The price/technical tradeoff was reasonable and in accordance with the RFP's evaluation scheme. The record shows that NARA weighed Vance's higher technical score against Stay's price advantage, and specifically concluded that Stay's price advantage offset Vance's technical advantage.

Out of the possible 1,000 weighted technical points, the difference between Stay's and Vance's technical scores was only 23.5 points. Further, the area of major difference

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most of Vance's proposed guards had the required Maryland licensing. We thus will not question NARA's evaluation of the firm's BAFO under this subfactor.

between the two--25 points under the past related experience factor--was considered less significant than the scoring spread; Vance had more "premium contracts" of a longer duration than Stay, but NARA determined that Stay's experience on its prior government contracts was sufficient to show that Stay, too, had the ability to provide large security staffs, such as that required here. Vance's remaining advantage was deemed too minor to warrant paying that firm a \$960,563 premium.⁵ This conclusion was neither unreasonable nor inconsistent with the RFP. Even where a solicitation provides that technical factors are more important than price, an agency may properly make award to the technically lower rated, lower-price offeror instead of the higher price, higher-technically rated offeror where the solicitation provided for a price/technical tradeoff and, as here, there was no significant technical difference between proposals. See General Offshore Corp., B-246824, Apr. 1, 1992, 92-1 CPD ¶ 335.⁶

The protests are denied in part and dismissed in part.

Ronald Berger
for Robert P. Murphy
Acting General Counsel

⁵Under the past related experience factor, Vance received a score of 8 of 10 possible points, which when multiplied by the weight of this evaluation factor (25) stated in the solicitation, resulted in 200 of 250 possible weighted points, while Stay only received 7 points, resulting in a total of 175 weighted points.

⁶Vance also argues that the price/technical tradeoff was improper because the agency's method of conducting the tradeoff--by considering in part the degree to which a proposal's technical advantages were worth the amount by which proposed guard compensation exceeded the wage determination rate--was not disclosed in the solicitation. However, there is no requirement that a solicitation set forth the precise manner in which a price/technical tradeoff will be performed.